

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

IN RE: COLUMBIA UNIVERSITY  
PATENT LITIGATION

MDL NO. 04-01592

IMMUNEX CORPORATION, a Washington  
Corporation and AMGEN INC., a Delaware  
Corporation,

Civil Action No. 04-10740-MLW

C. D. Cal. No. CV 03-4349 MRP (CWx)

Plaintiffs,

vs.

THE TRUSTEES OF COLUMBIA  
UNIVERSITY in the City of New York,  
a New York Corporation,

Defendant.

AND RELATED COUNTERCLAIM

**AMGEN INC'S AND IMMUNEX CORPORATION'S MOTION FOR LEAVE TO  
OBTAIN DISCOVERY FROM FORESEEABLY UNAVAILABLE WITNESSES**

Pursuant to the Court's June 23, 2004 Order, Plaintiffs Amgen Inc. and Immunex Corporation (collectively "Amgen") seek leave to conduct discovery of two aging witnesses, Dr. Louis Siminovitch and Dr. P.R. Srinivasan.

As grounds for this motion, Amgen submits that the discovery sought is relevant to prior art issues, double patenting and validity of the patent-in-suit and necessary to preserve Dr. Siminovitch's and Dr. Srinivasan's testimony due to the age of these witnesses. Both Dr. Siminovitch and Dr. Srinivasan are over eighty years old and they were researchers within the relevant field of invention. In particular, Dr. Srinivasan collaborated with a Dr. Lewis, who is now deceased, and they made relevant prior art presentations. Similarly, studies conducted Dr. Srinivasan and Dr. Lewis were performed in Dr. Siminovitch's laboratory. In addition, Dr. Siminovitch authored some relevant prior art publications. This Court previously noted its inclination to allow such depositions of elderly witnesses. June 22, 2004 Hearing, Tr. at p. 42.

Therefore, Amgen hereby respectfully requests such discovery be conducted promptly.

In accordance with Local Rule 7.1(a)(2), Amgen's counsel certifies that they have conferred with Columbia's counsel about this Motion and attempted in good faith to resolve the matter but were unable to reach an agreement.

Dated: July 16, 2004

Respectfully submitted,

IMMUNEX CORPORATION and AMGEN  
INC.

By their attorneys,

/s/ Eileen M. Herlihy

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I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on July 16, 2004.

/s/Erin Joffre